(2007) 05 JH CK 0008

In the Jharkhand High Court

Case No : M.A. No. 346 of 2004

National Insurance Company Ltd. APPELLANT

Vs

Goma Lagari and Others RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Citation : (2007) 2 BLJR 1812

Hon'ble Judges : M.Y. Eqbal, J;Dilip kumar sinha, J

Bench : Division Bench

Advocate : P.C. Ghose, for the Appellant; Ananda Sen and Ranjan Kumar, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal J.

1. This appeal by the appellant- National Insurance Company Limited is directed against the judgment and award dated 21st June, 2004 passed by the Additional District Judge-cum-Motor Accident Claims Tribunal, Chaibasa in Compensation Case No. 34 of 1995 whereby he has awarded a sum of Rs. 1,68,200/- by way of compensation for the death of the deceased in a motor vehicle accident.

2. The facts of the case in a narrow compass:

On 1.8.1993 the wife of Jena Laguri died and her dead body was to be taken to their native village for cremation. Jena Laguri approached the respondent-Steel Authority of India Ltd to provide vehicle to carry the dead body. The respondent-S.A.I.L. directed that the truck bearing Registration No. BRS-4538 may be taken to carry the dead body of the wife of Jena Gaguri to the native place. Accordingly, Jena Gaguri along with 14-15 persons carried the dead body on the truck. After cremation, all the persons were returning from the native place. While returning from the said truck, the driver consumed Haria (countrymade liquor) and was driving the truck in high speed in a very rash and negligent manner. Some of the occupants of the truck were sitting on the dala of the truck.

At the point of a turning, the driver could not control the vehicle and the vehicle fell down on the road side. The deceased Jena Gaguri trapped under the truck and sustained serious head injury which resulted in his death. Some of the occupants also sustained injuries. The claimants'' case was that the demised was a labourer working under the contractor of respondent- S.A.I.L. and was getting a sum of Rs. 50/- per day.

3. The respondent-S.A.I.L. filed written statement stating that the vehicle was, at the relevant time, insured with the National Insurance Company Limited. However, the manner of accident was not admitted and it is sidled that the Management or the owner of the vehicle never ordered the deceased or any person to board the truck and they boarded the truck without any authority of the Management.

4. The appellant-National Insurance Company Limited also filed written statement denying and disputing the liability of the respondent-Insurance Company on the ground, inter alia, that the Insurance Company did not cover the liability of any passenger carried in a commercial vehicle meant for carrying goods.

5. The Claims Tribunal, after hearing the parties, by the impugned judgment, awarded a sum of Rs. 1,68,200/- and had directed the appellant-Insurance Company to pay the said compensation amount.

6. Mr. D.C. Ghose, learned Counsel appearing for the appellant assailed the impugned judgment and award as being illegal and wholly without jurisdiction. Learned Counsel firstly submitted that the truck, in question, was not meant for carrying dead body. The vehicle, in question, is a goods carrying vehicle including live stock. Learned Counsel submitted that the definition of the goods as given under the Live Stock Importation Act includes live stock except living person. In the alternative, learned Counsel submitted that the accident took place while the truck was returning after cremation and several persons boarded the truck. In that view of the matter, the insurance Company has no liability.

7. Mr. Ananda Sen, learned Counsel appearing for the Steel Authority of India Limited, on the other hand, submitted that carrying dead body on the truck is not violation of insurance policy. Therefore, the appellant-Insurance Company is liable to pay the compensation.

8. We shall not go into the question as to whether dead body is a goods for the reasons that the accident occurred while the truck was returning after cremation. Admittedly, 14-15 persons were travelling the said truck which was a goods carrying vehicle. No evidence has been led to show that those persons including the deceased were travelling on hire.

9. Law has been well settled by the Supreme Court that where death or injury occurs while travelling in a goods carrying vehicle, the Insurance Company shall not have any liability. In our opinion, the Tribunal has not correctly appreciated

the law and has erroneously held that the Insurance Company is liable to pay the compensation amount. The Tribunal further held that the Insurance Company may recover the said amount from the owner of the truck, namely, Steel Authority of India Limited. In our view, such direction can be given only in those cases where it would be difficult for the claimants to recover the amount from a person who is the owner of the vehicle. In the instant case, there would not be any difficulty for the claimants to recover the amount from the respondent-S.A.I.L, for the reasons aforesaid, it can be held that in the fads and circumstances of the case, the appellant-Insurance Company shall not have any liability for payment of compensation to the claimants. The respondent-Steel Authority of India Limited is liable to pay compensation amount to the claimants.

This appeal is allowed with the aforesaid directions.

